

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 305 of
T. A. No. 1990

DATE OF DECISION 31-7-1991

TK Surendran

Applicant (s)

Mr V Rajendran

Advocate for the Applicant (s)

Versus

Union of India & another

Respondent (s)

Mr Mathew J Nedumpara, ACGSC

Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. SP Mukerji, Vice Chairman

&

The Hon'ble Mr. AV Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *✓*
2. To be referred to the Reporter or not? *✓*
3. Whether their Lordships wish to see the fair copy of the Judgement? *✓*
4. To be circulated to all Benches of the Tribunal? *✓*

JUDGEMENT

AV Haridasan, Judicial Member

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The applicant, / TK Surendran joined the Income Tax

Dptt. as a member of the Indian Revenue Service on 12.1.1953.

After 22 years of service in the Department, in the year 1975,

he tendered his resignation from the service. Accepting his

resignation, he was relieved from service on 31.12.1975. On

his relief, he was not sanctioned any pension or gratuity.

After resignation from service, he left India and returned

only in the year 1984. Coming to know that the rules permitted

voluntary retirement on completion of 20 years of service, the

applicant made a representation to the Central Board of Direct

Taxes requesting them to sanction him pension and gratuity.

His request was turned down on the ground that under Rule 26 of the Central Civil Services(Pension)Rules, 1972, the resignation from service entails forfeiture of past services and also that the notification dated 28.11.1978 inserting Rule 48-A in the Central Civil Service(Pension)Rules had no retrospective effect. The applicant then submitted a representation to the Hon'ble Minister of State, Personnel, Public Grievances and Pensions through Shri Mullappally Ramachandran, M.P. In reply to the above representation, ^{he} ~~it~~ was informed that the applicant's resignation from service could not be converted into a voluntary retirement. It was also stated that the provision for grant of pension on voluntary retirement after 20 years of service was introduced only in August, 1977.

Annexure-II is a copy of the communication received by the applicant on 6.2.1990 from the Department of Pension and Pensioners Welfare dated 6.2.1990 stating that the Department to had nothing to add ^{to} ~~what had been conveyed in the letter dated~~ 10.10.1988 addressed to Shri Mullappally Ramachandran by Shri P Chidambaram, former Minister of State for PRGP, Government of India. In Annexure-II reply, it was stated that it was not possible to convert the resignation of the applicant to voluntary retirement and that the provision for grant of pension on voluntary retirement after 20 years of service was introduced for the first time in August, 1977 only. Aggrieved by the rejection of his claim for pension, treating his resignation as voluntary retirement, the applicant has filed this appli-

cation under Section 19 of the Administrative Tribunals Act. The applicant has averred that denying pension to him on his resignation after 20 years of service on the ground that on the date on which he was relieved from service, Rule 48-A of the CCS(Pension)Rules had not been introduced, amounts to discrimination, violative of Articles of 14 and 16 of the Constitution of India because on relief from service, the officers so relieved formed a homogeneous class whether they were relieved in the year 1978 or earlier and therefore, granting pension to persons who retired voluntarily after Rule 48-A of the CCS(Pension)Rules was introduced and denying pension to him on the ground that he ceased to be in service before that date amounts to hostile discrimination. He has also averred that this is against the dictum laid down by the Hon'ble Supreme Court in DS Nakara V. Union of India (reported in 1983 SC, 130).

2. In the reply statement, the respondents have contended that the provision for voluntary retirement on completion of 20 years of service being introduced by incorporation of Rule 48-A in the said rules w.e.f. 28.11.1978 only, the applicant who had resigned from service long prior to that date has no right to claim any pension. They have also contended that the application is barred by limitation.

3. We have heard the arguments of the learned counsel on either side and have also carefully perused the documents produced. The applicant resigned from service on 31.12.1975.

Though the applicant had by then put in a service of 22 years at the time when he resigned from service, there was no provision enabling a Government servant who had completed 20 years of service to voluntarily retire. The provision for voluntary retirement on completion of 20 years of service was introduced only by notification G.I., M.F., No.7(2)-E.V (A)/73 dated 28.11.1978. This provision is only prospective in operation and applied only to persons who were in service on that date. Therefore, the claim of the applicant that denial of pension to him while persons who had completed 20 years of service and voluntarily retired after 20.11.1978 amounts to violation of Articles 14 and 16 of the Constitution of India and that it is against the dictum contained in the ruling of the Supreme Court in Makara's case is untenable, because a person who resigned from service in 1976 and a person who continued in service as on 28.11.1978 cannot be considered as members of a homogeneous class. One is the person in service while other is the person out of service. So the argument based on the dictum laid down in DH Nakara's case is absolutely untenable.

4. The learned counsel appearing for the applicant invited our attention to a notification of G.I.M. of Home Affairs (Department of Personnel & A.R) Memo No.25013/7/77-Estt(A) dated 26th August 1977, and argued that the case of the respondents that voluntary retirement of Government servants

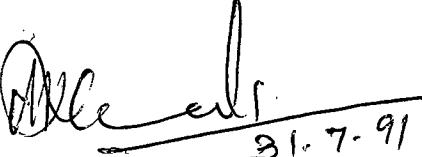
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on completion of 20 years of service was introduced for the first time on 14.11.1978 is not correct. We have gone through the above referred Government instruction. The Administrative Reforms Commission had in its report on Personnel Administration recommended that a civil servant may be allowed to retire and be given proportionate pension and gratuity if he had completed 15 years of service. This recommendation was considered by the Government and the Government decided that Government servants may be allowed to retire voluntarily after 20 years of qualifying service on proportionate pension and gratuity with a weightage of upto 5 years towards qualifying service where applicable, subject to certain conditions. The details of the scheme was also drawn up and it was decided that action ~~to make~~ ^M suitable provision in the CCS (Pension)Rules 1972 and the CCS(Leave)Rules. It is this Government decision that is contained in the memorandum dated 26th August, 1977. Only after the CCS(Pension)Rules was amended incorporating Rule 48-A on 14.11.1978, the Government servants got a right to seek voluntary retirement in terms of that rule and never before. Therefore, the argument of the learned counsel for the applicant that even before the introduction of Rule 48-A in the CCS(Pension)Rules, the provision for voluntary retirement was there is untenable. The memorandum dated 26th August 1977 is only a decision by the Government to introduce a scheme for voluntary retirement of employees on completion of 20 years of service and to make

provision for grant of pension in such cases by incorporating suitable provision in the Rules. Even before such a decision was taken, the applicant had already left the service. Therefore, there is absolutely no basis for the claim made in this application.

5. In the light of the above discussion, finding no merit in the claim of the applicant, we dismiss the application, without any order as to costs.


AV Haridasan

31.7.91

(AV HARIDASAN)
JUDICIAL MEMBER


SP Mukerji

31.7.91
(SP MUKERJI)
VICE CHAIRMAN

31-7-1991

trs